

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

HMD GLOBAL OY,

Movant,

v.

LADAS & PARRY LLP,

Respondent.

CASE NO. XXXX

Related to No. 6:21-cv-00166-ADA,
pending in the United States District Court
for the Western District of Texas

**DECLARATION OF MATTHEW J. MOFFA ESQ.,
IN SUPPORT OF MOVANT'S MOTION TO COMPEL
THIRD-PARTY LADAS & PARRY LLP**

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the following is true and correct:

1. I am an attorney admitted to practice in the State of New York and am a bar member in good standing with the United States District Court for the Southern District of New York. I am a partner with the law firm Perkins Coie LLP in New York and represent Movant in the matter *CPC Patent Techs. Pty Ltd. v. HMD Global Oy*, C.A. No. 21-00166-ADA, pending in the United States District Court for the Western District of Texas (hereinafter the “Litigation”). I make this Declaration upon personal knowledge, except as otherwise stated, and, if called upon to testify, could and would testify competently hereto.

2. This miscellaneous action originates from the Litigation. The Movant in the instant matter is the defendant in the Litigation.

3. Respondent Ladas & Parry LLP (“Ladas”) is a third party to the Litigation.

4. In early October 2022, I prepared a subpoena *duces tecum* and subpoena *ad testificandum*. The subpoena *duces tecum* requested that certain records be produced by October 28, 2022. The subpoena *ad testificandum* requested that a witness appear for deposition on November 3, 2022.

5. Both subpoenas were directed to any individual at Ladas & Perry LLP with custody of such records.

6. On October 12, 2022, I received a proof of service from Nationwide Legal, LLP stating that both subpoenas had been served upon Ladas & Parry LLP.

7. On October 31, 2022—three days after the deadline for document production requested in the subpoena *duces tecum*—I sent an e-mail to nymail@ladas.com, which is the

public-facing e-mail providing on Ladas & Parry LLP's website. I attached the subpoenas and proof of service to that e-mail. I did not receive a response to that e-mail.

8. On November 1, 2022, I sent a letter to Ladas & Parry LLP's New York office with a reminder of the October 12, 2022 subpoenas, and impending November 3, 2022 deposition. The next day, I received an e-mail confirming that the letter had been delivered to Ladas & Parry LLP's New York office.

9. On November 3, 2022, I attended the deposition set forth in the subpoena *ad testificandum*. After waiting eighteen minutes, I adjourned the deposition when no witness for Ladas & Parry LLP appeared.

10. On November 4, 2022, at approximately 2:00PM, I received a telephone call from Bert Ehrlich. Mr. Ehrlich is listed on Ladas's website as the chair of the firm's litigation department. (See <https://ladas.com/our-people/burton-s-ehrich/>).

11. Mr. Ehrlich left a voicemail message that was both confusing and seemingly inconsistent. For instance, Mr. Ehrlich made a reference to having been served with one subpoena but did not clarify with which of the two subpoenas he had been served. He also claimed that the subpoena was "not apparently served until October 31." While he confirmed service of that subpoena, he then said the individual whom HMD served "is no longer an employee of the firm," despite the subpoenas being directed to any custodian of records at Ladas & Parry LLP and being signed for by an apparent employee. In the voicemail, Mr. Ehrlich provided no explanation for Ladas's failure to produce documents or appear for the November 3 deposition, or any reason why Ladas had failed to reach out to HMD's counsel sooner.

12. I called Mr. Ehrlich back that afternoon. During that call, Mr. Ehrlich represented that Ladas had identified some documents responsive to the subpoena. However, Mr. Ehrlich

stated that Ladas & Parry LLP would not be producing those documents directly to HMD under the subpoena, but rather would have them sent to a former employee-attorney of Ladas & Parry LLP so that the former employee-attorney could select which documents to provide to HMD. Mr. Ehrlich also stated that he understood the former employee-attorney to be in possession of a “hard drive” of relevant and responsive records. However, rather than collect that hard drive for preservation and production, Mr. Ehrlich represented that the former employee-attorney was asked to review the hard drive and again select documents to provide to HMD. On the call, Mr. Ehrlich made no verbal objections to the subpoena, or any of the document requests or deposition topics contained therein.

13. The following exhibits are attached:

a. Attached as Exhibit A is a true and correct copy of a signed Order by the United States District Court in the Western District of Texas in *CPC Pat. Techs. Pty Ltd. v. HMD Global Oy*, C.A. No. 6:21-00166-ADA.

b. Attached as Exhibit B is a true and correct copy of the Subpoenas to Ladas & Parry LLP.

c. Attached as Exhibit C is a true and correct copy of the Proof of Service of the Subpoenas to Ladas & Parry LLP attached as Exhibit B.

d. Attached as Exhibit D is a true and correct copy of an October 31, 2022, e-mail from myself, Matthew Moffa, to nymail@ladas.com, which is the contact e-mail address provided on their public website www.ladas.com.

e. Attached as Exhibit E is a true and correct copy of a November 1, 2022, letter from myself, Matthew Moffa, to Ladas & Parry LLP’s law offices.

f. Attached as Exhibit F is a true and correct copy of a November 2, 2022, e-mail confirming delivery of the November 1, 2022, letter attached as Exhibit E.

g. Attached as Exhibit G is a true and correct copy of a November 3, 2022, deposition transcript.

h. Attached as Exhibit H is a true and correct copy of an October 11, 2022, Notice of Subpoena provided to CPC Patent Technologies Pty Ltd.

Dated: New York, New York
November 8, 2022

By: /s/ Matthew J. Moffa

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